IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-493

JOHN W. VLANDIS, Director of Admissions, The University of Connecticut, *Appellant*,

v.

MARGARET MARSH KLINE and PATRICIA CATAPANO, *Appellees*

Appeal From The United States District Court for The District of Connecticut

APPENDIX

FILED SEPTEMBER 22, 1972
PROBABLE JURISDICTION NOTED DECEMBER 4, 1972

INDEX

RELEVANT DOCKET ENTRIES

1971	
October 20	Verified Complaint . . . Motion for Permission to Proceed in Forma Pauperis, Affidavit, Order granting Permission to Proceed in Forma Pauperis . . . Motion for Preliminary Injunction and Application for Convening of a Three-Judge District Court. . . .
November 8	Hearing . . . Injunction will be ruled upon by the Three-Judge Court.
December 2	Answer to Complaint, filed.
December 10	Motion of Patricia Catapano to Intervene as a Plaintiff, Notice of Motion, and Motion for Permission to Proceed in Forma Pauperis and Affidavit, filed.
December 27	Hearing on (1) Plaintiff's (Re-Notice) Motion for Preliminary Injunction. . . . (2) Motion of Patricia Catapano to Intervene as a Plaintiff. "Granted".
1972	
January 4	Ruling on Application for a Preliminary Injunction, entered . . . denied.
January 6	Answer to Complaint of Intervener, Patricia Catapano filed by defendant.
January 7	Hearing on the Merits. Patricia Catapano's Motion to Intervene granted. Motion to Dismiss — Decision Reserved.

June 14 — Memorandum of Decision, Findings of Fact and Conclusions of Law, filed and entered. Court holds . . . "that Conn. Gen. Stats. Sec. 10-329(b), as amended by Public Act No. 5, Sec. 126 (1971), and the regulations promulgated thereunder by the defendant are unconstitutional in that they violate section 1 of the fourteenth amendment to the Constitution of the United States; . . . that before the commencement of the Spring semester for 1972 each of the plaintiffs was a bona fide resident of the State of Connecticut and . . . that each of them is entitled to a refund of the amounts of tuition and fees paid by her which is in excess of the amount paid by resident students as tuition and fees for that semester. The defendant is enjoined from enforcing subsections (a)(2), (a)(3) and (a)(5) of Conn. Gen. Stats. Sec. 10-329(b), as amended by Public Act No. 5, Sec. 126 (1971), and any regulations based thereon."

June 29 — Notice of Appeal to U.S. Supreme Court, filed by defendant.

July 13 — Motion for Stay Upon Appeal, filed by defendant.

July 17 — Plaintiffs' Opposition to Defendant's Motion for Stay Pending Appeal, filed.

July 17 — Order endorsed on Defendant's Motion for Stay Upon Appeal, as follows: "The burden would be greater on the students and plaintiffs than on the def. Motion denied. July 15, 1972".

VERIFIED COMPLAINT OF PLAINTIFF MARGARET MARSH KLINE

I.

JURISDICTION

1. This is an action for legal and equitable relief pursuant to § 1983 of Title 42 of the United States Code. The Plaintiff seeks an order enjoining the Defendants from violating her constitutional and legal rights through the Defendants' conduct and actions hereinafter described. Relief is sought on the basis that the Defendants' conduct and actions violate the Plaintiff's rights under the Fourteenth Amendment to the Constitution of the United States of America.

2. Original jurisdiction over this suit is conferred upon this Court under the provisions of § 1343 of Title 28 of the United States Code as such provisions relate to actions arising under § 1983 of Title 42 of the United States Code.

II.

PARTIES

A. PLAINTIFF

1. MARGARET MARSH KLINE is 22 years old, a citizen of the United States of America and a resident of the Town of Mansfield in the State of Connecticut.

B. DEFENDANT

1. The defendant, JOHN W. VLANDIS, Director of Admissions of the University of Connecticut, sued in his individual and official capacity, is charged with the duty of determining a students' in-state or out-of-state status. He is a citizen of the United States and of the State of Connecticut.

III.

CLAIM FOR RELIEF

1. In May of 1971, the plaintiff, Margaret Marsh Kline, while residing in California, became engaged to Peter Kline, a life-long Connecticut resident.

2. In May of 1971, the plaintiff while a student at California State College at Haywood applied to the University of Connecticut at Storrs for admission as an undergraduate and was accepted in late May, 1971.

3. On June 26, 1971, the plaintiff and Peter Kline intermarried in California and soon after took up residence in Storrs, Connecticut, where they have established a permanent home.

4. On or about September 2, 1971, the plaintiff received a letter, together with a copy of "Regulations Regarding Residence" and a Residence Affidavit, (appended as plaintiff's Exhibits A, B, and C), from the defendant, John W. Vlandis, Director of Admissions of the University of Connecticut. The letter informed her that she was being classified as an out-of-state student.

5. That same day the plaintiff protested this classification by letter to the University of Connecticut Business Office, a copy of which is appended as plaintiff's Exhibit D.

6. On September 14, 1971, the plaintiff registered as a full-time student at the University. On September 3, 1971 she was required to pay $150.00 as out-of-state tuition for the first semester, as compared with no tuition being paid by an in-state student. Upon registration for the second semester she will be required to pay $425.00 tuition per semester while an in-state student will pay $175.00.

7. In classifying the plaintiff as an out-of-state student the defendant has acted under color of § 10-329(b) of the Connecticut General Statutes (as amended by Public Act, No. 5, § 126 (June Session, 1971) a copy of which is appended as plaintiff's Exhibit E.

8. Section 10-329(b) sets up two classes of residents by which the plaintiff has been irreversibly and arbitrarily classified as an out-of-state student thereby depriving her of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

9. By reason of this irreversible classification, the plaintiff is being penalized for exercising her fundamental constitutional right to travel freely from one state to another.

10. An irreversible classification based on the plaintiff's residence at the time of her application to the University of Connecticut is arbitrary, capricious and unreasonable.

11. Accordingly, the plaintiff has suffered, is suffering and will continue to suffer immediate and irreparable injury for which there is no adequate remedy at law.

IV.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays the Court to:

1. Declare that Section 10-329(b) of the General Statutes of the State of Connecticut is, on its face or as applied to the Plaintiff, invalid and unenforceable under the Constitution of the United States of America.

2. Preliminary enjoin the Defendant from acting under the provisions of Section 10-329(b).

3. Permanently enjoin the Defendant from acting under the provisions of Section 10-329(b).

4. Grant damages to the Plaintiff in an amount to compensate for any loss incurred because of action taken under Section 10-329(b).

5. Grant such other relief as the Court may deem appropriate.

PLAINTIFF'S EXHIBIT 'A'

THE UNIVERSITY OF CONNECTICUT
STORRS, CONNECTICUT 06208
DIVISION OF STUDENT PERSONNEL
ADMISSIONS OFFICE

Mrs. Margaret Kline
Flaherty Road
Storrs, Conn. 06268

Dear Mrs. Kline:

I am enclosing a copy of the new residence regulations as recently established by the General Assembly of Connecticut. It becomes quite obvious that you fall in the category of an out-of-state student.

We are, therefore, notifying the Business Office that you are to be treated as an out-of-state student.

Very truly yours,

L/S
JOHN W. VLANDIS
Director of Admissions

JWV:ch

PLAINTIFF'S EXHIBIT 'B'

TO ALL NEW STUDENTS:

The 1971 Connecticut General Assembly passed legislation which established new resident and non-resident tuition charges and definitions for determining status as 'out-of-state student' in the State system of higher education.

These 'Regulations Regarding Residence' and the tuition schedule with dates effective are given below.

*Regulations Regarding Residence**

a. Each student must file with his application for admission to the University of Connecticut an affidavit of residence, on forms prescribed by the University. On the basis of this information, each entering student will be classified as a Connecticut or an out-of-state student.

b. The following definitions have been established by the Connecticut General Assembly:

'Out-of-state student', if single, means a student whose legal address for any part of the one year period immediately prior to his application for admission at a constituent unit of the State system of higher education was outside Connecticut.

'Out-of-state student', if married and living with his spouse, means a student whose legal address at the time of his application for admission to such a unit was outside of Connecticut.

The status of a student as established at the time of his application for admission at a constituent unit of the State system of higher education under the provisions of this section shall be his status for the entire period of his attendance at such constituent unit.

c. Except as stated in paragraph (b) above, the residence of a student shall follow that of the parents or legally appointed guardian. The residence of the father, if living, otherwise the residence of the mother, is the residence of a student but if the father and the mother have separate places of residence, the student takes the residence of the parent with whom he lives or to whom he has been assigned by court order.

d. The failure of a student to disclose fully and accurately all facts relating to his residence status shall be grounds for suspension or expulsion.

*These regulations are subject to subsequent revision by the Connecticut General Assembly.

Tuition per semester (in addition to resident and non-resident University *fees):*

	Fall semester 1971-72	Spring semester 1972 and thereafter
In-State student	None	$175
Out-of-state student	$150	$425

PLAINTIFF'S EXHIBIT 'C'

Margaret Kline
Flaherty Rd.
Storrs, Ct.

RESIDENCE AFFIDAVIT

Please read carefully the "Regulations Regarding Residence" and complete the section below that applies to you. You must complete and return this affidavit in order to qualify as an in-state student even though you may have already submitted a residence affidavit. Earlier forms are superseded by the new regulations.

I. Complete both statements:

I, _____, am single and certify that I am a legal resident of the State of Connecticut. I have not had a legal address outside of Connecticut for any part of the one year period prior to my application for admission to the University.

Signature: _____

I, _____, certify that I am the legal parent ( ) Guardian* ( ) of _____ _____ and a legal resident of the State of Connecticut. I have not had a legal address outside of Connecticut for any part of the one year period prior to his (her) application for admission to the University.

Signature: _____

II. I, _____, am married, live with my spouse, and certify that my legal address was in

Connecticut at the time of my application for admission to the University.

Signature: _____

*If certification is that of guardian, copy of Court appointment must be submitted.

Please return immediately to:

Admissions Office
The University of Connecticut
Storrs, Connecticut 06268

PLAINTIFF'S EXHIBIT 'D'

Flaherty Road
Storrs, Connecticut 06268
September 2, 1971

Business Office U-73
The University of Connecticut
Storrs, Connecticut 06268

To Whom It May Concern:

This is to advise you, that, in accordance with the present requirements for out-of-state students, I am paying the fee for an out-of-state student. However, I feel that you do not have the right to regard me as a non-resident and am paying the out-of-state student fee under protest.

Sincerely yours,

MARGARET MARSH KLINE

PLAINTIFF'S EXHIBIT 'E'

Connecticut Public Acts (1971) No. 5, § 126 (June Session).

"Sec. 126. Section 10-329b of said supplement is repealed and the following is substituted in lieu thereof: (a) For the purposes of this section and sections 122 to 125, inclusive, of this act,

(1) "constituent unit of the state system of higher education" means such units as defined in section 10-322;

(2) an "out-of-state student," if single, means a student whose legal address for any part of the one-year period immediately prior to his application for admission at a constituent unit of the state system of higher education was outside of Connecticut;

(3) an "out-of-state student," if married and living wtih his spouse, means a student whose legal address at the time of his application for admission to such a unit was outside of Connecticut;

(4) a "full-time student" means a student who has been registered and who has been accepted for matriculation at such a unit in a course of study leading to an associate, bachelor or advanced degree or whose course of instruction or credit hour load indicates pursuit toward a degree;

(5) "tuition" means a direct charge for instructional programs, which charge will be deposited to the resources of the general fund and is clearly delineated from any other fees. The status of a student, as established at the time of his application for admission at a constituent unit of the state system of higher education under the provisions of this section, shall be his status for the entire period of his attendance at such constituent unit."

VERIFICATION

Personally appeared before me, MARGARET M. KLINE, and, having read the foregoing complaint, MARGARET M. KLINE does state that she knows the contents hereof and that the allegations herein contained are true, except as to such matters as are known by information and belief, and these she verily believes to be true, and that she believes that she is entitled to the redress sought herein.

L/S
MARGARET M. KLINE

COUNTY OF WINDHAM
STATE OF CONNECTICUT } ss. Willimantic
October 12, 1971

Subscribed and sworn to, before me, at Willimantic, Connecticut, this 12th day of October, 1971.

L/S
JOHN A. DZIAMBA
Commissioner of Superior Court

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

MARGARET MARSH KLINE, *Plaintiff*,
PATRICIA CATAPANO, *Applicant for Intervention*,

v.

JOHN W. VLANDIS, *Defendant*.

CIVIL ACTION NO. 14,680

INTERVENER'S COMPLAINT

1. Patricia Catapano is a citizen of the United States of America and a resident of the Town of Mansfield in the State of Connecticut. She is 22 years of age and single.

2. In January of 1971, Patricia Catapano applied from Athens, Ohio to the University of Connecticut at Storrs, for admission as a graduate student and was accepted in February of 1971.

3. In late August, 1971, Patricia Catapano moved her residence to Connecticut and registered as a full-time student at the University. She was classified by the defendant as an out-of-state student and was required to pay $150.00 as out-of-state tuition for the first semester plus $200.00 out-of-state student fees as compared with no tuition being paid by an in-state student. Upon registration for the second semester, she will be required to pay $425.00 tuition plus a $200.00 out-of-state fee.

5. In classifying the plaintiff as an out-of-state student the defendant has acted under color of Section 10-329(b) of the Connecticut General Statutes (as amended by Public Act, No. 5, Section 126 [June Session, 1971]).

6. Section 10-329(b) sets up two classes of residents by which the plaintiff has been irreversibly and arbitrarily classified as an out-of-state student thereby depriving her of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

7. By reason of this irreversible classification, the plaintiff is being penalized for exercising her fundamental constitutional right to travel freely from one state to another.

8. An irreversible classification based on the plaintiff's residence at the time of her application to the University of Connecticut is arbitrary, capricious and unreasonable.

9. Accordingly, the plaintiff has suffered, is suffering and will continue to suffer immediate and irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays the court to:

1. Declare that Section 10-329(b) of the General Statutes of the State of Connecticut is, on its face or as applied to the plaintiff, invalid and unenforceable under the Constitution of the United States of America.

2. Preliminary enjoin the defendant from acting under the provisions of Section 10-329(b).

3. Permanently enjoin the defendant from acting under the provisions of Section 10-329(b).

4. Grant damages to the plaintiff in an amount to compensate for any loss incurred because of action taken under Section 10-329(b).

5. Grant such other relief as the court may deem appropriate.

VERIFICATION

Personally appeared before me, PATRICIA CATAPANO, and, having read the foregoing complaint, PATRICIA CATAPANO does state that she knows the contents hereof and that the allegations herein contained are true, except as to such matters as are known by information and belief, and these she verily believes to be true, and that she believes that she is entitled to the redress sought herein.

L/S

PATRICIA CATAPANO

STATE OF CONNECTICUT
COUNTY OF WINDHAM } ss. Willimantic
December 9th, 1971

Subscribed and sworn to, before me, at Willimantic, Connecticut, this 9th day of December, 1971.

L/S

JOHN A. DZIAMBA
Commissioner of Superior Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

MARGARET MARSH KLINE

v.

JOHN W. VLANDIS

CIVIL ACTION NO. 14,680

ANSWER TO COMPLAINT

1. Paragraphs 2, 4, 5, 6 and 7 of the Complaint is admitted.

2. Paragraphs 8, 9, 10 and 11 are denied.

3. As to the allegations in Paragraphs 1 and 3, the Defendant is without knowledge or information sufficient to form a belief and leaves the Plaintiff to her proof.

CERTIFICATION

This certifies that a copy of the foregoing has been served on all counsel of record, by depositing same in the United States mails, postage prepaid, on the 23rd day of November, 1971.

L/S
JOHN G. HILL, JR.
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

MARGARET MARSH KLINE, *Plaintiff*
PATRICIA CATAPANO, *Applicant for Intervention*

v.

JOHN W. VLANDIS, *Defendant*

CIVIL ACTION NO. 14,680

ANSWER TO COMPLAINT OF INTERVENER, PATRICIA CATAPANO

1. Paragraphs 2, 3 and 5 of the Complaint are admitted.

2. Paragraphs 6, 7, 8 and 9 are denied.

3. As to the allegations in Paragraph 1, the Defendant is without knowledge or information sufficient to form a belief and leaves the Plaintiff to her proof.

Dated at Mansfield, Connecticut this 5th day of January, 1972.

ROBERT K. KILLIAN
Attorney General

L/S

By: JOHN G. HILL, JR.
Assistant Attorney General

CERTIFICATION

This certifies that a copy of the foregoing has been served on all counsel of record by depositing same in the United

States mails, postage prepaid, on the 5th day of January, 1972.

L/S
By: JOHN G. HILL, JR.
Assistant Attorney General

OPINIONS

The Opinion of the United States District Court, District of Connecticut, entered June 22, 1972, contained in the Appendix to the Jurisdictional Statement at page 1a.

DEFENDANT EXHIBIT 1—

University of Connecticut Tuition Schedule

1. TUITION SCHEDULE

		In-State	Out-of-State
1971	Tuition	—	$150
	Fee	$145	145
			200
		$145	$495
1972	Tuition	175	425
	Fee	145	145
			200
		$320	$770

2. STUDENT COUNT

Undergraduate	October 15, 1971			
	Undergraduate Total	12,231		
	Out-of-State		1,774	
	Foreign		64	
			1,838	
	Less N.E. program		274	
				1,564
Graduate	Storrs			
	Total	3,456		
	Out-of-State			645
				2,209

3. CALCULATION OF REVENUE SHORTFALL

Total out-of-state students, 2,209 @ $425 per semester =	$938,825
Less 2,209 @ $175 (in-state rate)	386,575
Shortfall in revenue	$552,250

EXCERPTS FROM TRANSCRIPT

(Tr. page 26)

BY MR. DZIAMBA:

Q. Mrs. Kline, part of the record is that you were a student in California when you met Peter Kline and you became engaged.

In the period before you were married had you considered moving to Connecticut?

(Tr. page 27)

A. No, I hadn't. Well, except for the fact that I knew I was going to be married and I knew that we wanted to return to Connecticut.

Q. Did you make any inquiries to the University of Connecticut as to your student status? A. Yes, I did. At the time I applied to the University I also inquired about my residency; if I married a Connecticut resident would I be considered a Connecticut resident also. And I received a mimeographed letter back explaining that, yes, I would be considered a Connecticut resident.

Q. Mrs. Kline, you then married Peter Kline and returned to Connecticut? A. Yes.

(Tr. page 28)

BY MR. DZIAMBA:

Q. Mrs. Kline, can you explain what weight you gave to your anticipation of being classified as a Connecticut resident in your decision to move to Connecticut? A. I still don't understand you.

Q. How much consideration, how much importance was it to your decision to move to Connecticut, your classification

as a Connecticut resident? A. Well, if I was to be classified as a Connecticut resident we would have moved. But if I would have known that I would have been classified as an out-of-state student I would have remained in California.

(Tr. page 29)

Q. When did you find out that you were classified as a Connecticut resident? A. I'm not classified —

Q. I mean not as a Connecticut resident. A. Well, when we arrive in Connecticut I inquired at the University and finally the actual — I received a letter from the University around the 1st of September and (Tr. p. 30) it was informing me that I would be considered an out-of-state student, and accompanied shortly thereafter with an out-of-state fee bill.

(Tr. page 35)

BY JUDGE CLARIE:

Q. As far as California is concerned, are you a voter there? A. I was a registered voter, yes. But I'm going to register as a Connecticut voter now.

(Tr. page 38)

BY MR. HILL . . .

Q. Have you registered to vote in Connecticut?
A. Have I?

Q. Yes. A. No, I haven't, as of yet. I have sent in, however, a letter to them asking them about the procedure.

(Tr. page 42)

BY JUDGE BLUMENFELD:

Q. Well, you didn't come to Connecticut because of any romantic involvement? A. No.

Q. It had something to do with the courses or the quality of education at the University of Connecticut? A. Yes. The professor who is in charge of the field that I am in is well-known throughout the United States and I felt that studying under him would be a benefit to my education.

Q. That's a particular branch of education, is it?
A. Yes.

(Tr. pages 43-44)

BY MR. DZIAMBA:

Q. Miss Catapano, if you had known of the higher tuition rate before you came to Connecticut would that have influenced your decision, in any way, to attend the Education Department at the University of Connecticut? A. Yes, it would have.

Q. In what way? A. I believe I would not have come.

BY MR. HILL . . .

(Tr. page 58)

Q. On this basis, Mr. Carlson, can you estimate what the cost per student would be? Very roughly? A. It's in excess of $2,000 per year per student that the citizens of the state, through its various taxes and revenues, provide for the student.

Q. Now, you had made available to you the first exhibit that was submitted here which shows a revenue shortfall of some $552,250, or roughly half a million dollars. Do you consider that a reasonable estimate or do you consider it modest?

A. I consider it conservative. Two bases:

One, I believe you mentioned it didn't include the branches or the University Law School or the Health Center. So there would be those factors that should be recognized, but it's a conservative number.

And I would also suggest that if this case were successful, that is, the plaintiff were successful, we would be facing the same issue with the other institutions of higher learning which also have a differential.

So the number you show is a very, very conservative number.

Q. Would you also comment on this data from 1967 to date? A. Well, from '67 to date has been the period of most dramatical —

JUDGE BLUMENFELD: Mr. Hill, what is the purpose of this line of inquiry?

We are not concerned with the matter of establishing whether or not there is a budget deficit. What does that have to do with the case?

MR. HILL: The cases indicate, your Honor, that if you are going to question this on an equal protection basis I have the obligation to put some evidence in the record to show that there is public education, the cost of it and I have to establish that the classification of out of state is reasonable.

Now, I would say unless I put in some financial data I would be cut off from developing that issue, and this is the reason why.

I didn't want to take that chance, your Honor.

JUDGE BLUMENFELD: Is there any dispute that the tuition collected does not cover the actual cost of education? Is there any dispute about that?

MR. DZIAMBA: No, there isn't, your Honor.

JUDGE BLUMENFELD: All right.

MR. HILL: Fine, your Honor. Then it's in the record. Then I won't go into any more data.

BY MR. HILL:

Q. Now, Mr. Carlson, getting down to the particular point that is raised here today, there is a differential in tuition between out of state and in state. Do you consider that to be a reasonable way to help finance higher education? A. Yes, based on two basic points. One is a statutory reference of Section 10-117 of the General Statutes makes reference to providing an education for students whose parents are the residents of the state, as well as the level of support that is given by the citizens of this state.

And beyond that, the situation exists that these people have built the university; it's a traditional sort of a thing in the sense the university is there because the citizens of the state have supported it and allowed it to grow and encouraged its growth and the expected return benefit to the state that its graduates will give.

So the out-of-state differential based on these facts I think is entirely reasonable and justified, and the amount of differential from the fiscal standpoint is not unreasonable. The differential is reasonable, but the amount is not unreasonable.

JUDGE BLUMENFELD: You agree with the legislature?

THE WITNESS: Yes sir.

JUDGE BLUMENFELD: Okay.

BY MR. HILL:

Q. Commissioner, as Commissioner of Finance and Control if this revenue were not available under the law what alternatives are available to the state? A. We would have to continue the modification of spending for state agencies, be it the university or whatever it may be.

Q. Why is that, Commissioner? A. Because the Governor, again through the statutes, has an obligation to operate a balanced budget and we are now in that situation, wherein the Governor had to make many severe restrictions in spending of departments and agencies in order to balance the budget. And if this revenue was unavailable, this conservative $550,000, we would have to do one of two things:

Either curtail spending somewhere to that extent at the university, or whoever it may be; or go to the General Assembly when they return next month and ask for an additional source of revenue to the extent of $550,000, conservatively.

MR. HILL: Thank you, Commissioner. That's all.

Supreme Court of the United States

No. 72-493

John W. Vlandis, Director of Admissions,
the University of Connecticut,

Appellant,

v.

Margaret Marsh Kline and Patricia Catapano

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

December 4, 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. A-98

72-493

JOHN W. VLANDIS, Director of Admissions, The University of Connecticut, *Appellant*,

v.

MARGARET MARSH KLINE and PATRICIA CATAPANO, *Appellees*

On Appeal from a Three-Judge
United States District Court
For The District of Connecticut

JURISDICTIONAL STATEMENT

ROBERT K. KILLIAN
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Assistant Attorney General

30 Trinity Street
Hartford, Connecticut
Attorneys for Appellant

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APPENDIX

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CASES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. A-98

JOHN W. VLANDIS, Director of Admissions, The University of Connecticut, *Appellant*,

v.

MARGARET MARSH KLINE and PATRICIA CATAPANO, *Appellees*

On Appeal from a Three-Judge United States District Court For The District of Connecticut

JURISDICTIONAL STATEMENT

ROBERT K. KILLIAN
Attorney General of Conn.

JOHN G. HILL, JR.
Assistant Attorney General

30 Trinity Street
Hartford, Connecticut
Attorneys for Appellant

JURISDICTIONAL STATEMENT

Appellant, official of the State of Connecticut, appeals from the judgment of the three-judge United States District Court for the District of Connecticut, entered on June 14, 1972, declaring Connecticut General Statute 10-329(b), as amended by Public Act No. 5, Section 126 (1971) unconstitutional and enjoining the operation of subsections (a)(2), (a)(3) and (a)(5) thereof. This Act provides for tuition at the constituent units of the State system of higher education and also provides a higher level of tuition for out-of-state students. The opinion of the Court is printed as Appendix A of this Statement.

Subsections (a)(2) and (a)(3) of Section 126 define an "out-of-state" student as follows:

> If single, means a student whose legal address for any part of the one-year period immediately prior to his application for admission at a constituent unit of the State system of higher education was outside Connecticut . . . If married and living with spouse, means a student whose legal address at the time of his application for admission to such unit was outside Connecticut.

Subsection (a)(5) of the statute prohibits any change in status.

> The status of a student as established at the time of his application for admission at a constituent unit of the State system of higher education under the provisions of this Section shall be his status for the entire period of his attendance at such constituent unit.

JURISDICTION

This action to enjoin the operation of subsections (a)(2), (a)(3) and (a)(5) of Connecticut General Statute Section

10-329(b), as amended by Public Act No. 5, Section 126 (1971) was instituted pursuant to 28 U. S. C. 1343, and a statutory three-judge court was convened to consider the injunction request pursuant to 28 U. S. C., Sections 2281 and 2284. The judgment of the District Court was entered on June 22, 1972. Appellant filed notice of appeal with the District Court on June 29, 1972, pursuant to 28 U. S. C. 1253. A copy of the Order and Judgment entered by the District Court and a copy of the Notice of Appeal filed with the District Court are printed as Appendices B & C, respectively. An application to stay the permanent injunction issued by the District Court was denied on July 15, 1972. An application for a similar stay was then addressed to Mr. Justice Marshall on July 18, 1972 and denied on August 3, 1972.

In essence, the Appellant is asking the United States Supreme Court to scrutinize the legislative classification adopted by the Connecticut statute measured by the standard of the equal protection clause, i.e., may any state of facts be assumed which would sustain this classification on a reasonable basis? *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911). In this connection it is appropriate to consider that while some minor inequities will result from any classification, they must be measured against the administrative and economic advantages that result therefrom. *Bayside Fish Flour Co.* v. *Gentry*, 297 U.S. 422, 429 (1935); *Walters* v. *City of St. Louis*, 347 U.S. 231, 237 (1954). In fact, this Court has already considered and found reasonable a one-year waiting period for a student to attain in-state status. *Starns* v. *Malkerson*, 326 F. Supp. 254 (D. Minn.) (1970) Aff'd Mem. 39 U.S. L.W. 3423 (1971).

The pertinent sections of the Connecticut statute have already been quoted and are printed as Appendix D.

QUESTIONS PRESENTED BY APPEAL

The basic constitutional question presented by this appeal is whether a state may seek to defer a part of the cost of its educational establishment by imposing a permanent tuition differential requiring specifically defined out-of-state students to pay a higher portion of the cost. It is the State's position that the differential treatment of out-of-state students is reasonably related to a legitimate object or purpose, i.e., secure State funds and permit a partial cost equalization. It should be emphasized that even at its differential level, the out-of-state tuition does not meet the students' average instructional costs, i.e., the State is still subsidizing the out-of-state student. Under the Fourteenth Amendment, governing bodies are endowed with a wide range of discretion in enacting laws which affect some of the residents differently from others and this constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to achieve a state's objective. *Waggoner* v. *Rosenn*, 286 F. Supp. 275, 277 (1968); *McGowan* v. *Maryland*, 366 U.S. 420, 429 (1961).

> "... the classification must not be arbitrary or capricious, but must bear some just and reasonable relation to the object of the legislation." *Bayside Fish Flour Co.* v. *Gentry*, 297 U.S. 422, 429 (1935).

STATEMENT OF THE CASE

The Appellees, two students enrolled at the University of Connecticut, brought this action in the United States District Court for the District of Connecticut on October 12, 1971, challenging the constitutionality of Section 10-329(b) of the Connecticut General Statutes, as amended by Public Act No. 5. Section 126 (June Session, 1971).

This Act became effective October 1, 1971, and directed the Board of Trustees at the University of Connecticut to

establish a higher tuition for out-of-state students than they charged residents of the State of Connecticut. Subsection (a)(2) of Section 126 of the Statute defines a single out-of-state student as one whose legal address for any part of the one-year period immediately prior to his admission application was outside Connecticut. Subsection (a)(3) of Section 126 of the Statute defines a married out-of-state student as one whose legal address at the time of application was outside Connecticut. Subsection (a)(5) of the Statute states that a student maintains his initial status for the entire period of his attendance at the constituent unit of higher education. They contended specifically that the classification system embodied in the tuition statute violated the due process and equal protection clauses of the United States Constitution. The Appellant is the Director of Admissions at the University of Connecticut, a state official having responsibility for the implementation of the statute.

Since the complaint sought to enjoin a state law as repugnant to the Constitution, a statutory three-judge court was convened. Oral argument was heard on January 7, 1972 and both parties filed briefs. The District Court considered initially the evidence presented by the Appellees purporting to show that since being admitted to the University of Connecticut, they had established bona fide Connecticut residence. On June 14, 1972 the District Court filed its Memorandum of Decision, holding that the Connecticut tuition statute violated the Fourteenth Amendment to the Constitution of the United States and that judgment should enter in favor of the Appellees. On June 21, 1972 the District Court entered its Order and Judgment declaring the classification provisions of the statute unconstitutional and enjoining the Defendant from enforcing subsections (a)(2), (a)(3) and (a)(5) of Connecticut General Statute Section 10-329(b), as amended by Public Act No. 5, Section 126 (1971). On June 29, 1972, the Appellant filed notice of appeal to the Supreme Court and on July 11,

1972, the Appellant moved that the District Court stay the effect of the permanent injunction until the Supreme Court could consider and decide the appeal in this case. This motion was denied by the District Court on July 15, 1972 and a similar motion was made to Mr. Justice Marshall on July 18, 1972, which was denied on August 3, 1972. In its opinion, the District Court relied *inter alia* on the specific fact that both Appellees were registered voters in Connecticut. In fact, both testified, and it is a fact, that at the time of the trial they had *not* registered to vote even though their complaint made such an allegation.

THE ISSUE IS SUBSTANTIAL

The Court based its decision on the constitutional questions on the conclusion that the statute creates an irrebutable presumption of nonresidency that prevails throughout the students' period of attendance at the University. The Court analogized this to the case of *Carrington* v. *Rash,* 380 U.S. 89 (1965) where the Supreme Court invalidated a section of the Texas Constitution prohibiting Texas-based members of the Armed Forces from acquiring Texas residency for voting purposes while in the military service.

We submit that the Court's reliance of *Carrington* v. *Rash* is misplaced. Nothing is more basic to our constitutional system than the right to vote; this right is protected and guaranteed by the Constitution. The state does not create the right to vote — it must be extended to every citizen.

This is very much different from a tuition differential which requires specifically defined out-of-state students to pay a greater portion of the cost, even though not even the total instructional cost, of their education for the period of their attendance. The out-of-state classification system is designed as a reasonable means to secure state funds and permit a partial cost equalization. From the foregoing, we submit that

under the Fourteenth Amendment, legislative bodies are endowed with a wide range of discretion in enacting laws which affect some of the residents differently from others and this constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to achieve a state's objective. *Waggoner* v. *Rosenn,* 286 F. Supp. 275, 277 (1968); *McGowan* v. *Maryland,* 366 U.S. 420 (1961). The resolution of this case will have an immediate and significant effect on all public institutions of higher learning in the United States. We contend, further, that the Court has abused its discretion in granting the Appellees' injunction.

CONCLUSION

The federal questions presented by this appeal are substantial and require plenary consideration by this Court in order to clarify the constitutionally permissible classification of out-of-state students for tuition purposes. It is a question of nationwide significance and it is, therefore, respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

ROBERT K. KILLIAN
Attorney General of Connecticut

JOHN G. HILL, JR.
Assistant Attorney General

Attorneys for Appellant

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 14,680

MARGARET MARSH KLINE and PATRICIA CATAPANO

v.

JOHN W. VLANDIS, *Director of Admissions,*
The University of Connecticut

BEFORE: ANDERSON, *Circuit Judge,*
BLUMENFELD and CLARIE, *District Judges*

MEMORANDUM OF DECISION FINDINGS OF FACT AND CONCLUSIONS OF LAW

BLUMENFELD, District Judge:

In this case, two students enrolled at the University of Connecticut, who are required to pay tuition and other fees at higher rates than residents of Connecticut by reason of the application of Conn. Gen. Stats. § 10-329(b), as amended by Public Act No. 5, § 126 (June Session 1971),[1] challenge the validity of this statute as violative of the due process and equal protection clauses of the United States Constitution. These claims state causes of action under the Civil Rights Act, 42 U.S.C. § 1983, and jurisdiction is properly rested on 28 U.S.C. § 1343(3). See *Lynch* v. *Household Fin. Corp.*, 40 U.S.L.W. 4335 (U.S. Mar. 23, 1972). Since part of the relief sought is an injunction against the enforcement of a state

[1]Involved also are regulations of the University which have followed the relevant portions of the statute in haec verba.

statute on the ground of its unconstitutionality, a three judge district court was convened. See 28 U.S.C. § § 2281 and 2284.

I.

The plaintiff Margaret Marsh Kline is an undergraduate student at the University of Connecticut. In May of 1971, while attending college in California, she became engaged to Peter Kline, a life-long Connecticut resident. On June 26, 1971, they were married at her home in California and soon after they took up residence in Storrs, Connecticut, where they have established a permanent home. Mrs. Kline has a Connecticut driver's license and is registered as a Connecticut voter. The defendant John W. Vlandis, Director of Admissions at the University of Connecticut, has classified Mrs. Kline as an "out of state student" under subsection (a)(3) of § 126, which provides:

> "(A)n 'out of state student,' if married and living with his spouse, means a student whose legal address at the time of his application for admission to such unit was outside of Connecticut; . . . ."

The intervening plaintiff Patricia Catapano applied for admission to the University of Connecticut from Ohio in January 1971 and was accepted in February 1971. In August of that year, she moved her residence to Connecticut and registered as a full-time graduate student. She, too, has a Connecticut driver's license and has been registered as a Connecticut voter. The defendant has classified her as an "out of state student" under subsection (a)(2) of § 126, which provides:

> "(A)n 'out of state student,' if single, means a student whose legal address for any part of the one-year period immediately prior to his application for admission at a constituent unit of the state system of higher education was outside of Connecticut; . . . ."

For the Fall semester 1971-72 each plaintiff was required to pay $150 for tuition, plus an additional $200 non-resident fee, whereas residents were charged nothing. For the Spring semester 1972 they were each required to pay a tuition fee of $425, plus an additional $200 non-resident fee, as compared to only a tuition fee of $175 paid by students classified as Connecticut residents.[2]

Once the plaintiffs have been classified as "out of state students" they are plainly and explicitly barred from obtaining any change in that status, since the statute commands, subsection (a)(5):

> "The status of a student, as established at the time of his application for admission at a constituent unit of the state system of higher education under the provisions of this section, shall be his status for the entire period of his attendance at such constituent unit."[3]

II.

The plaintiffs do not claim that the statute does not read so as to classify them as non-residents. Rather, their claim is that by providing that they be kept in that class the statute is unconstitutional. The last two clauses of section 1 of the fourteenth amendment to the Constitution of the United States read:

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[2]The plaintiffs' application for a temporary injunction against enforcement of the statute and the regulations thereunder setting up the fee differentials was denied after the court was advised that student loans or grants sufficient to meet the added charges for the Spring semester had been made available to them. See Ruling on Application for a Preliminary Injunction, January 4, 1972.

[3]Shortly after this case was heard, defense counsel informed the court that the legislature, then in session, was considering a bill relating to tuition payments by non-residents which would repeal the particular portions of the statute which are the target of constitutional attack here. Although such a bill was passed (House No. 5302), the view that such legislative action would moot the claims made here lost its validity when the Governor of Connecticut vetoed it on May 18, 1972.

> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The plaintiffs rely on both the due process and the equal protection clauses. We do not consider these separately because ". . . the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive, ..." *Bolling* v. *Sharpe*, 347, U.S. 497, 499 (1954). It is not enough to say that the state has power to treat different classes of persons in different ways, *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); the classifications "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano, Co.* v. *Virginia*, 253 U.S. 412, 415 (1920). See also, *Reed* v. *Reed*, 404 U.S. 71, 75-76 (1971). Assuming that it is permissible for the state to impose a heavier burden of tuition and fees on non-resident than on resident students, the state may not classify as "out of state students" those who do not belong in that class. Whether the statute is construed as creating an irrebuttable presumption or as a rule of substantive law, that is what it does. In *Heiner* v. *Donnan*, 285 U.S. 312, 321 (1932), the Court was confronted with a constitutional challenge to a federal statute which imposed a higher tax on transfers of property made by any donor within two years of his death because such transfers "shall be deemed and held to have been made in contemplation of death . . . ." In holding that the statute which imposed a tax upon an assumption of fact which the taxpayer was forbidden to controvert was so arbitrary and unreasonable as to violate the due process clause, the Court said:

> "This Court has held more than once that a statute creating a presumption which operates to deny a fair

opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Id.* at 329.

See also, *Ducharme* v. *Putnam,* 161 Conn. 135, 141-43, ... A.2d ..... (1971). Furthermore, since the irrebuttable presumption in §126(a)(5) freezes the plaintiffs into the classification of "out of state students," they are required to pay higher tuition and fees than "in state students." Thus, the effect of the statute is to deny the plaintiffs equal protection of the laws in violation of the fourteenth amendment.[4] The rule that a conclusive presumption may not be utilized to classify a person as a non-resident when he is in fact a resident was applied in *Carrington* v. *Rash,* 380 U.S. 89 (1965), where the Court invalidated a section of the Texas Constitution which prohibited a member of the armed forces who first established his home in Texas during the course of his military service from satisfying the residency qualifications for a voter so long as he remained a member of the armed forces. The Supreme Court held that by prohibiting all servicemen not residents of Texas before induction "ever to controvert the presumption of non-residence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment." *Id.* at 96.

For the foregoing reasons, we hold that Conn. Gen. Stats. § 10-329(b), as amended by Public Act No. 5, § 126 (1971), and the regulations promulgated thereunder by the defendant are unconstitutional in that they violate section 1 of the fourteenth amendment to the Constitution of the United States. We also find that before the commencement of the Spring semester for 1972 each of the plaintiffs was a bona fide

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[4]Since the statute is stigmatized as so arbitrary and unreasonable by its own terms as to be unconstitutional, we do not reach the question of whether to test the validity of the "out of state" classification as being "not merely *rationally related* to a valid public purpose, but *necessary* to the achievement of a *compelling* state interest." *Eisenstadt* v. *Baird,* 40 U.S.L.W. 4303, 4306 n.7 (U.S. Mar. 22, 1972).

resident of the State of Connecticut and conclude that each of them is entitled to a refund of the amounts of tuition and fees paid by her which is in excess of the amounts paid by resident students as tuition and fees for that semester.

The defendant is enjoined from enforcing subsections (a)(2), (a)(3) and (a)(5) of Conn. Gen. Stats. § 10-329(b), as amended by Public Act No. 5, § 126 (1971), and any regulations based thereon.

Enter judgment for the plaintiffs.

Dated: June 14th, 1972.

ROBERT P. ANDERSON
United States Circuit Judge

M. JOSEPH BLUMENFELD
Chief United States District Judge

T. EMMET CLARIE
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 14,680

MARGARET MARSH KLINE and PATRICIA CATAPANO

v.

JOHN W. VLANDIS, *Director of Admissions,*
The University of Connecticut

JUDGMENT

This cause having come on for hearing on the merits and the Court having filed its Memorandum of Decision, Findings of Fact and Conclusions of Law on June 14, 1972, it is

ORDERED, ADJUDGED AND DECREED

(1) That Conn. Gen. Stats. § 10-329(b), as amended by Public Act No. 5, § 126 (1971), and the regulations promulgated thereunder by the defendant are unconstitutional in that they violate section 1 of the fourteenth amendment to the Constitution of the United States;

(2) That the defendant hereby refund to each of the plaintiffs the amounts of tuition and fees paid by her which is in excess of the amounts paid by resident students as tuition and fees for the 1972 Spring semester; and

(3) That the defendant is enjoined from enforcing subsections (a)(2), (a)(3) and (a)(5) of Conn. Gen. Stats. § 10-329(b), as amended by Public Act No. 5, § 126 (1971), and any regulations based thereon.

Dated at Hartford, Connecticut, this 21st day of June, 1972.

ROBERT P. ANDERSON
United States Circuit Judge

M. JOSEPH BLUMENFELD
Chief Judge, United States District Court

T. EMMET CLARIE
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL NO. 14,680

MARGARET MARSH KLINE and PATRICIA CATAPANO
Plaintiffs

v.

JOHN W. VLANDIS, *Director of Admissions,*
The University of Connecticut
Defendant

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that John W. Vlandis, Director of Admissions of the University of Connecticut, Defendant in the above-captioned matter, does hereby appeal to the Supreme Court of the United States from the final judgment, entered in this action on June 21, 1972, declaring Connecticut

General Statute Section 10-329(b), as amended by Public Act No. 5, Section 126 (1971), unconstitutional and enjoining the operation of subsections (a)(2), (a)(3) and (a)(5) thereof.

2. This appeal is taken pursuant to Title 28 of the United States Code, Section 1253.

3. Pursuant to the provisions of Rule 12(1) of the Rules of the Supreme Court of the United States, the Clerk is requested to certify and transmit to the Supreme Court of the United States the entire record of the proceedings herein.

Dated: June 27, 1972

ROBERT K. KILLIAN
Attorney General

By: JOHN G. HILL, JR.
Assistant Attorney General
University of Connecticut
Gulley Hall U-135
Storrs, Connecticut 06268

APPENDIX D

PUBLIC ACT NO. 5

AN ACT CONCERNING REVENUE SOURCES FOR THE STATE OF CONNECTICUT.

SEC. 126. Section 10-329b of said supplement is repealed and the following is substituted in lieu thereof: (a) For the purposes of this section AND SECTIONS 122 TO 125, INCLUSIVE, OF THIS ACT, (1) "constituent unit of the state system of higher education" means such units as defined in section 10-322; (2) an "out-of-state student," if single, means a student whose [last] legal address FOR ANY PART OF THE ONE-YEAR PERIOD IMMEDIATELY prior to [acceptance] HIS APPLICATION for admission at a constituent unit of the state system of higher education was outside of Connecticut; (3) an "out-of-state student," if married and living with his spouse, means a student whose legal address at the time of [registration at] HIS APPLICATION FOR ADMISSION TO such a unit was outside of Connecticut; (4) a "full-time student" means a student who has been registered and who has been accepted for matriculation at such a unit in a course of study leading to an associate, bachelor or advanced degree or whose course of instruction or credit hour load indicates pursuit toward a degree; (5) "tuition" means a direct charge for instructional programs, which charge will be deposited to the resources of the general fund and is clearly delineated from any other fees. THE STATUS OF A STUDENT, AS ESTABLISHED AT THE TIME OF HIS APPLICATION FOR ADMISSION AT A CONSTITUENT UNIT OF THE STATE SYSTEM OF HIGHER EDUCATION UNDER THE PROVISIONS OF THIS SECTION, SHALL BE HIS STATUS FOR THE ENTIRE PERIOD OF HIS ATTENDANCE AT SUCH CONSTITUENT UNIT.